

House Bill 1155

By: Representatives Knight of the 126<sup>th</sup>, Tumlin of the 38<sup>th</sup>, and Mosby of the 90<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 5 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to current income tax payment, so as to revise and change certain provisions  
3 regarding withholding tax on distributions to nonresident members of partnerships,  
4 Subchapter "S" corporations, and limited liability companies; to repeal conflicting laws; and  
5 for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 5 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
9 current income tax payment, is amended by revising Code Section 48-7-129, relating to  
10 withholding tax on distributions to nonresident members of partnerships, Subchapter "S"  
11 corporations, and limited liability companies, as follows:

12 "48-7-129.

13 (a)(1) Any partnership, Subchapter 'S' corporation, or limited liability company which  
14 owns property or does business within this state shall be subject to a withholding tax.  
15 Such tax shall be withheld from any distributions paid or any distributions credited to  
16 members who are not residents of Georgia, except as provided in subsection (c) of Code  
17 Section 48-7-24.

18 (2) The amount of tax to be withheld for each nonresident member shall be determined  
19 by multiplying the distribution paid or the distribution credited by a rate of 4 percent. To  
20 the extent that the partnership, Subchapter 'S' corporation, or limited liability company  
21 remits withholding tax during the course of the tax year which exceeds the Georgia  
22 income tax liability of a nonresident member, that member shall be entitled to a refund  
23 of the excess withholding at the end of the taxable year.

24 (3) Any partnership, Subchapter 'S' corporation, or limited liability company which fails  
25 to withhold and pay over to the commissioner any amount required to be withheld under  
26 this Code section may be liable for a penalty equal to 25 percent of the amount not

1 withheld and paid over. Any penalty imposed under this subsection shall be paid upon  
2 notice and demand by the commissioner or the commissioner's delegate and shall be  
3 assessed and collected in the same manner as the withholding taxes imposed by this  
4 article.

5 (4) The partnership, Subchapter 'S' corporation, or limited liability company and its  
6 members shall be jointly and severally liable for the withholding tax liability imposed  
7 under this subsection and shall be assessed accordingly.

8 (b)(1) As an alternative to the withholding requirement imposed by subsection (a) of this  
9 Code section, the commissioner may allow the filing of composite returns by  
10 partnerships, Subchapter 'S' corporations, or limited liability companies on behalf of their  
11 nonresident members and may provide for the requirements of filing composite returns  
12 by regulation. For purposes of this subsection, the term 'composite return' ~~shall mean~~  
13 means a return filed by a partnership, Subchapter 'S' corporation, or limited liability  
14 company on behalf of all of its nonresident members which reports and remits the  
15 Georgia income tax of the nonresident members.

16 (2) Where a partnership, Subchapter 'S' corporation, or limited liability company chooses  
17 to file a composite return and meets all the requirements of filing ~~the~~ such composite  
18 return, such partnership, Subchapter 'S' corporation, or limited liability company shall be  
19 exempt from the withholding requirements imposed under subsection (a) of this Code  
20 section.

21 (3) The liability imposed by this subsection shall be paid upon notice and demand by the  
22 commissioner or the commissioner's delegate and shall be assessed and collected in the  
23 same manner as all other withholding taxes imposed by this article.

24 (c)(1) If a partnership, Subchapter 'S' corporation, or limited liability company fails to  
25 remit withholding for a nonresident member and the commissioner determines that such  
26 failure is due to a false representation that the member is a resident of Georgia, there shall  
27 be imposed in addition to the tax a penalty of the greater of \$250.00 or 5 percent of the  
28 amount which should have been withheld. The partnership, Subchapter 'S' corporation,  
29 or limited liability company and the nonresident member shall be jointly and severally  
30 liable for any such penalty imposed.

31 (2) The penalty imposed by this subsection shall be paid upon notice and demand by the  
32 commissioner or the commissioner's delegate and shall be assessed and collected in the  
33 same manner as withholding tax imposed by this article.

34 (d)(1) Every partnership, Subchapter 'S' corporation, or limited liability company which  
35 is required to deduct and withhold the withholding tax imposed by subsection (a) of this  
36 Code section shall remit such tax and file the required return on a form approved by the  
37 commissioner ~~and remit payment to the department~~ as follows:

1 (A) Taxes deducted and withheld on distributions paid by a partnership, Subchapter 'S'  
 2 corporation, or limited liability company to members who are nonresidents shall be due  
 3 on or before the last day of the calendar month following the calendar month within  
 4 which the distribution was paid or credited; and

5 (B) Taxes deducted and withheld on distributions credited but not paid by a  
 6 partnership, Subchapter 'S' corporation, or limited liability company to members who  
 7 are nonresidents shall be due on or before the due date for filing the income tax return  
 8 for the partnership, Subchapter 'S' corporation, or limited liability company as  
 9 prescribed in subsection (a) of Code Section 48-7-56 without regard to any extension  
 10 of time for filing such income tax return.

11 (2) Every partnership, Subchapter 'S' corporation, or limited liability company required  
 12 to deduct and withhold tax under this article shall furnish, ~~within 30 days of the close of~~  
 13 ~~its taxable year, to each nonresident member for which tax is withheld a written statement~~  
 14 ~~in duplicate, showing the name of the partnership, Subchapter 'S' corporation, or limited~~  
 15 ~~liability company, the name of the member of the partnership, Subchapter 'S' corporation,~~  
 16 ~~or limited liability company, the member's federal tax identification number, the total~~  
 17 ~~amount of distributions paid to the member during the taxable year, and the total amount~~  
 18 ~~of tax deducted and withheld with respect to the member during the taxable year. The~~  
 19 ~~written statement shall be in a form approved by the commissioner and shall contain such~~  
 20 ~~additional information as the commissioner may prescribe. The partnership, Subchapter~~  
 21 ~~'S' corporation, or limited liability company shall file copies of all such written statements~~  
 22 ~~with the commissioner~~ a written statement or form approved by the commissioner to each  
 23 nonresident member. Such statement or form shall include the name and federal tax  
 24 identification number of the partnership, Subchapter 'S' corporation, or limited liability  
 25 company, the member's federal tax identification number, the total amount of  
 26 distributions paid to the member during the taxable year, the total amount of tax deducted  
 27 and withheld with respect to such member during the year, and such other information  
 28 as the commissioner shall prescribe. Such statement or form shall be furnished to the  
 29 nonresident member and filed in duplicate with the commissioner on or before the due  
 30 date for filing the income tax return of such partnership, Subchapter 'S' corporation, or  
 31 limited liability company as prescribed in subsection (a) of Code Section 48-7-56 without  
 32 regard to any extension of time for filing such income tax return.

33 (3) Any partnership, Subchapter 'S' corporation, or limited liability company required to  
 34 furnish a nonresident member with the written statement required by this subsection  
 35 which furnishes a false or fraudulent statement or which fails to furnish the statement  
 36 shall be subject to the penalty contained in subsection (d) of Code Section 48-7-126. The  
 37 penalty imposed by this subsection shall be paid upon notice and demand by the

1 commissioner or the commissioner's delegate and shall be assessed and collected in the  
2 same manner as the withholding tax imposed by this article.

3 (e)(1) Notwithstanding subsection (a) of this Code section, a partnership, Subchapter 'S'  
4 corporation, or limited liability company shall not be required to deduct and withhold tax  
5 for a nonresident member if:

6 (A) A composite return is filed on behalf of nonresident members pursuant to the  
7 requirements of filing such composite returns as set by the commissioner;

8 (B) The aggregate annual distributions made to a member are less than \$1,000.00;

9 (C) A federally chartered Subchapter 'S' corporation fails to meet the requirements of  
10 subparagraph (b)(7)(B) of Code Section 48-7-21 and is therefore required to remit  
11 corporate income tax;

12 (D) Compliance will cause undue hardship on the partnership, Subchapter 'S'  
13 corporation, or limited liability company, provided that no partnership, Subchapter 'S'  
14 corporation, or limited liability company shall be exempt from complying with the  
15 withholding requirements imposed under subsection (a) of this Code section unless the  
16 commissioner approves in writing a written petition for exemption from the  
17 withholding requirements based on undue hardship. The commissioner may prescribe  
18 the form and contents of such a petition and specify standards for when a partnership,  
19 Subchapter 'S' corporation, or limited liability company ~~will~~ shall not be required to  
20 comply with the withholding requirements due to undue hardship;

21 (E) The partnership is a publicly traded partnership as defined in Section 7704 of the  
22 Internal Revenue Code of 1986; or

23 (F) The member meets one of the exceptions as set forth in the rules and regulations  
24 promulgated by the commissioner.

25 (2) Where distributions paid or distributions credited to nonresident members of  
26 partnerships, Subchapter 'S' corporations, or limited liability companies are subject to  
27 withholding under other provisions of Georgia law or represent a return of such  
28 member's investment or a return of capital, such distributions shall not be subject to  
29 withholding under subsection (a) of this Code section.

30 (f) The commissioner ~~is~~ shall be authorized to prescribe forms and to promulgate rules and  
31 regulations which the commissioner deems necessary in order to effectuate this Code  
32 section."

## 33 SECTION 2.

34 All laws and parts of laws in conflict with this Act are repealed.